



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 16 2009

REPLY TO THE ATTENTION OF:  
AE-17J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Arthur J. Harrington  
Godfrey & Kahn, s.c.  
780 North Water Street  
Milwaukee, Wisconsin 53202-3590

Dear Mr. Harrington:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Bremner Food Group, Inc., Docket No. **CAA-05-2009-0035**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

SEP 16 2009

Pursuant to paragraph 34 of the CAFO, Bremner Food Group, Inc. must pay the civil penalty within 30 days of October 16, 2009. Its check must display the case name, the docket number, **CAA-05-2009-0035**, and the billing document number, **2750903A037**.

Please direct any questions regarding this case to Cynthia A. King, Associate Regional Counsel, at (312) 886-6831.

Sincerely yours,

Bonnie Bush  
Air Enforcement and Compliance Assurance  
Section (MI/WI)

Enclosure

cc: Ray Pilapil, Chief  
Compliance and Systems Management Section  
Illinois Environmental Protection Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

In the Matter of:	)	Docket No. CAA-05-2009-0035
	)	
Bremner Food Group, Inc.	)	Proceeding to Assess a Civil Penalty
South Beloit, Illinois	)	Under Section 113(d) of the Clean Air
	)	Act, 42 U.S.C. § 7413(d)
Respondent.	)	
_____	)	

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**Consent Agreement and Final Order**

**Preliminary Statement**

REGIONAL HEARING CLERK  
USEPA  
REGION 5

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Bremner Food Group, Inc. (Bremner), a corporation doing business in Illinois.

4. Under 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. On May 31, 1972, EPA approved Illinois Pollution Control Board (IPCB) Rules 101 and 103 as part of the federally enforceable Illinois State Implementation Plan (SIP), 37 Fed. Reg. 10862 (May 31, 1972).

10. IPCB Rule 101 defines a “new emission source” as any emission source that commences construction or modification on or after April 14, 1972. IPCB Rule 101 is now set forth at 35 Illinois Administrative Code (IAC) § 201.102.

11. IPCB Rule 101 defines an “emission source” as any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

12. IPCB Rule 103(a)(1) states that no person shall cause or allow the construction of any new emission source or any new air pollution control equipment, or cause or allow the modification of any existing emission source or air pollution control equipment, without first obtaining a construction permit from the Illinois Environmental Protection Agency (IEPA). IPCB Rule 103(a)(1) is now set forth at 35 IAC § 201.142.

13. IPCB Rule 103(b)(1) states that no person shall cause or allow the operation of any new emission source or new air pollution control equipment of a type for which a construction permit is required by paragraph (a) of IPCB Rule 103 without first obtaining an operating permit from IEPA. IPCB Rule 103(b)(1) is now set forth at 35 IAC § 201.143.

14. On March 3, 2000, EPA approved 35 IAC §§ 201.152 and 201.157 as part of the federally enforceable Illinois SIP. See 65 Fed. Reg. 14 (January 3, 2000).

15. IAC § 201.152 states, in part, that an application for a construction permit shall contain, at a minimum, the nature, specific points of emissions, and quantities of uncontrolled and controlled air contaminant emissions at the source that includes the emission unit or air pollution control equipment.

16. IAC § 201.157 states, in part, that an application for an operating permit shall contain, at a minimum, the data and information specified in IAC § 201.152.

17. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation, up to a total of \$220,000, for violations that occurred from January 31, 1997 through March 15, 2004, up to \$32,500 per day of violation, up to a total of \$270,000, for violations that occurred from March 15, 2004 through January 11, 2009, and up to \$37,500 per day of violation, up to a total of \$295,000, for violations that have occurred on or after January 12, 2009, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

18. Section 113(d)(1), 42 U.S.C. § 7413(d)(1), limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

19. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violation alleged in this CAFO.

### **Factual Allegations and Alleged Violations**

20. Bremner owns and operates a private label cookie manufacturing facility located at 1450 Pate Plaza Drive, South Beloit, Illinois (the facility).

21. Bremner began operating the facility in October 2005.

22. The facility is a “new emission source,” as that term is defined at 35 IAC § 201.102, subject to IEPA’s construction and operating permit requirements.

23. The facility consists of three production lines, each with a natural gas-fired oven.

24. Each production line at the facility emits uncontrolled volatile organic chemicals (VOCs) from the ovens.

25. The facility adds flavorings containing VOCs to the production lines.

26. The facility applied for a construction and operating permit for its three production lines on July 30, 2005.

27. IEPA issued a lifetime operating permit to the facility on September 30, 2005.

28. The facility’s lifetime operating permit and permit application failed to account for VOCs contained in flavorings added to each process.

29. On October 7, 2008, the facility applied for a revision of its lifetime operating permit to account for VOC emissions from flavorings being emitted from the ovens.

30. From July 2005 through October 7, 2008, Bremner violated the requirements of 35 IAC §§ 201.152 and 201.157, and Section 110 of the Act, 42 U.S.C. § 7410.

31. On June 2, 2008, EPA issued a Notice of Violation (NOV) to Bremner for its failure to account for all potential emissions that could be emitted from its facility when it applied for its construction and operating permits, in violation of 35 IAC §§ 201.152 and 201.157, and Section 110 of the Act, 42 U.S.C. § 7410.

32. On July 30, 2008, EPA and Respondent held a conference to discuss the June 2, 2008, NOV.

**Civil Penalty**

33. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation, prompt return to compliance, and agreement to perform a supplemental environmental project (SEP), Complainant has determined that an appropriate civil penalty to settle this action is \$20,310.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,310 civil penalty to:

For electronic funds transfer, payable to the "Treasurer, United States of America,":

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO and the billing document number.

35. If Respondent pays by check, a transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Cynthia A. King, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

36. This civil penalty or any stipulated penalty is not deductible for federal tax purposes.

37. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under paragraph 50, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

38. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

### **Supplemental Environmental Project**

39. Respondent must complete a SEP designed to protect the environment or public health by removing stratospheric ozone-depleting substances from the environment as more particularly described herein.

40. At its South Beloit, Illinois facility, Respondent must replace the R-22 refrigerant in the Line 2 cooling unit (Serial No. K02195748-0201) with R-404, a non-ozone-depleting substance, within six (6) months of the effective date of this CAFO.

41. Respondent must spend at least \$95,000 to implement the SEP.

42. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

43. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

44. Respondent must maintain copies of all reports submitted to EPA according to this CAFO.

45. Respondent must submit a SEP completion report to EPA within 30 days of completion of the SEP. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this



CAFO; and

- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

46. Respondent must submit all notices and reports required by this CAFO by first class

mail to:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

47. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

48. Following receipt of the SEP completion report described in paragraph 45, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 50, below.

49. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an

agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 50, below.

50. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent spends less on the SEP than 90% of the amount set forth in paragraph 41, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 41.
- b. If Respondent has completed the SEP but the SEP is not satisfactory, Respondent must pay \$63,500 in addition to any penalty required under subparagraph 41.a, above.
- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$63,500 in addition to any penalty required under subparagraph 50.a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 40, above, for implementing the SEP or fails to submit timely the SEP completion report required by paragraph 45, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$250	1 <sup>st</sup> through 14 <sup>th</sup> day
\$500	15 <sup>th</sup> through 30 <sup>th</sup> day
\$750	31 <sup>st</sup> day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

51. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

52. Respondent must pay any stipulated penalties within 15 days of receiving EPA's

written demand for the penalties. Respondent will use the method of payment specified in paragraph 34, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

53. Any public statement that Respondent makes referring to the SEP must include the following language, "Bremner Food Group, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action for violations of the Clean Air Act."

54. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 calendar days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

55. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

### **General Provisions**

56. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

57. The CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

58. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 56, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

59. Respondent certifies that it is complying fully with the Act.

60. This CAFO constitutes an "enforcement response" as that term is used in EPA's *Clean Air Act Stationary Source Civil Penalty Policy* to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

61. The terms of this CAFO bind Respondent, its successors, and assigns.

62. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms. Each party agrees to bear its own costs and attorneys' fees in this action.

**CONSENT AGREEMENT AND FINAL ORDER**

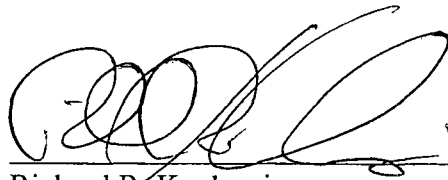
**In the Matter of: Bremner Food Group, Inc.**

**Docket No. (CAA-05-2009-0035)**

63. This CAFO constitutes the entire agreement between the parties.

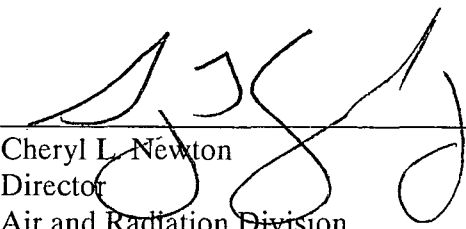
**Bremner Food Group, Inc., Respondent**

Date 8/28/09

  
Richard R. Koulouris  
Corporate Vice President and President  
Bremner Food Group, Inc.

**United States Environmental Protection Agency, Complainant**

Date 9/14/09

  
Cheryl L. Newton  
Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of: Bremner Food Group, Inc.**

**Docket No. - CAA-05-2009-0035**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/14/09  
Date

Walter W. Kovach  
Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5

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In the Matter of: Bremner Food Group, Inc.  
Docket No.

**CERTIFICATE OF SERVICE**

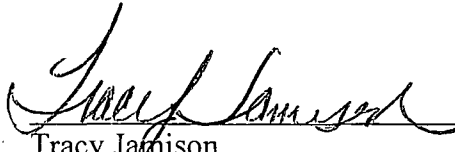
I, Tracy Jamison, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, docket number, CAA-05-2009-0035, to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Consent Agreement and Final Order by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Arthur J. Harrington  
Godfrey & Kahn, s.c.  
780 North Water Street  
Milwaukee, Wisconsin 53202-3590

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REGIONAL HEARING CLERK  
USEPA  
REGION 5

on the 17 day of September, 2009.

  
Tracy Jamison  
Office Automation Clerk  
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 01876034

**Enforcement and Compliance Assurance Issues**  
**Regular – Non-Confidential**

**EPA ENTERS CONSENT AGREEMENT AND FINAL ORDER WITH BREMNER FOOD GROUP, INC. RESOLVING VIOLATIONS OF THE CLEAN AIR ACT**

On September 14, 2009, the Acting Regional Administrator signed a Final Order resolving violations of the Clean Air Act (the Act) by Bremner Food Group, Inc. (Bremner) at its cookie manufacturing facility in South Beloit, Illinois. At its South Beloit facility, Bremner failed to account for all of the volatile organic compounds (VOCs) emitted from the facility in violation of the Illinois State Implementation Plan and Section 110, 42 U.S.C. § 7410, of the Clean Air Act. Under the terms of the settlement in the Consent Agreement and Final Order (CAFO), Bremner applied for a revision to its permit to account for all of the VOCs emitted, Bremner will perform a SEP in which it retrofits non-violating refrigerant units to use non-ozone depleting refrigerants, and will pay a civil penalty of \$20,310. This action was commenced and concluded through the CAFO.

Contact: Cynthia A. King, 312-886-6831; secondary contact: Raymond Cullen, 312-886-0538